

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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1107 CV 1041

TYBRIN CORPORATION
1030 Titan Court
Fort Walton Beach, FL 32547

CASE NO. _____

JUDGE WEBER, J.

Plaintiff,

v.

**UNITED STATES DEPARTMENT
OF THE AIR FORCE**

Daniel Lyons, Contracting Officer
ASC/PKWDK, Area B
Building 16, Room 128
2275 D Street
Wright-Patterson Air Force Base, Ohio
45433-7228

**COMPLAINT FOR
DECLARATORY
JUDGMENT AND FOR
PERMANENT
INJUNCTION**

Defendant.

Plaintiff TYBRIN Corporation files this Complaint for declaratory judgment and for permanent injunction against the United States Air Force. The following facts are relevant to this action:

CASE OVERVIEW

1. This case arises from a decision made by the Department of the Air Force to release confidential information obtained from TYBRIN under the Freedom of Information Act (FOIA). TYBRIN asks this Court to declare that the TYBRIN information is exempt from disclosure under the FOIA because such

material is commercial and confidential. TYBRIN also asks the Court to permanently enjoin the Air Force from releasing this information.

PARTIES

2. TYBRIN is a privately-owned company with its principle place of business in Fort Walton Beach, Florida. TYBRIN is a high-technology business with extensive federal contracts.

3. The Department of the Air Force is an Executive Branch of the United States Government.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under the Administrative Procedure Act, 5 U.S.C. §701-§706. TYBRIN also invokes this Court's authority to issue declaratory judgments under 28 U.S.C. § 2201 and §2202. Venue is proper because the Contracting Officer and relevant documents are located at Wright-Patterson Air Force Base, Ohio.

STATEMENT OF FACTS

5. TYBRIN provides a variety of supplies and services to the federal government and has extensive contracts with the Air Force. On 20 April 2006, TYBRIN received award of the Consolidated Acquisition of Professional Services (CAPS) contract. CAPS is a five year, small business set-aside (size standard 1500), multiple award IDIQ contract for Advisory & Assistance Services. The contract was awarded to nine other contractors: BTAS, Inc.,CENTECH, HMR

Tech/HJFord 8(a) Joint Venture, INNOLOG, Innovative Technologies Corporation (ITC), LOGTEC, Madison Research (MRC), PESystems, Sumaria.

6. On 30 May 2007, TYBRIN sent an e-mail to the CAPS Contracting Officer and Program Manager. The e-mail, entitled "AWARD ANNOUNCEMENT FOR RFP TIME & MATERIAL PROPOSAL FOR HQ AFMC/A4YF (KELLER) to HJFord/HMRTTech Joint Venture," concerned whether one of the CAPS contractors was eligible to receive awards under the contract.

7. In addition to this e-mail, TYBRIN provided other information to the Air Force in connection with the propriety of contract awards, and specifically the eligibility of certain contractors under the CAPS program. TYBRIN voluntarily gave this information to the Air Force. The Air Force did not require or otherwise solicit this information from TYBRIN.

8. On 8 November 2007, the Air Force Contracting Officer, located at Wright-Patterson Air Force Base, Ohio, received a FOIA request from HMR Tech/HJ Ford Joint Venture's attorney. The request asked the Air Force to produce the TYBRIN e-mail described in the sixth paragraph of this Complaint.

9. By letter dated 8 November 2007, TYBRIN objected to the release of this e-mail. Specifically, TYBRIN argued that the e-mail constitutes confidential information that is protected from public disclosure under FOIA "Exemption 4," 5 U.S.C. § 552(b)(4). TYBRIN explained that the e-mail, which addressed contract awards made by the Air Force, was voluntarily provided to the agency.

TYBRIN went on to explain that the information contained in the e-mail is not provided to the general public. And TYBRIN would not have sent the e-mail had TYBRIN known the Air Force would release it.

10. By letter dated 7 December 2007, Daniel J. Lyons, III., an Air Force Contracting Officer, notified TYBRIN that the Air Force intends to release this e-mail to the requestor. A copy of this letter is attached at Exhibit A.

11. The Air Force letter gave TYBRIN until December 27, 2007 to file suit to prevent the release of the e-mail.

COUNT I

12. TYBRIN incorporates paragraph 1-11.

13. The Air Force's decision to release the information at issue in this case violates the Freedom of Information Act. The e-mail constitutes commercial and confidential information which was voluntarily provided to the Air Force. As such, the information is exempt from disclosure under FOIA "Exemption 4." The Air Force's decision to release this document is arbitrary and capricious under the Administrative Procedure Act.

COUNT II

14. TYBRIN incorporates paragraph 1-13.

15. This Court has authority under 28 U.S.C. § 2201-§2202 to declare the rights of TYBRIN concerning the e-mail at issue and the Air Force's decision to release this document.

16. This Court also has authority to determine, as a matter of law, whether information TYBRIN provided to the Air Force in connection with the propriety of awards under CAPS, and the eligibility of certain contractors, was voluntarily provided to the Air Force.

PRAYER FOR RELIEF

TYBRIN respectfully requests the Court to:

- A. Declare that the e-mail is confidential commercial information that was voluntarily obtained from a person (TYBRIN) and is protected from disclosure by FOIA Exemption 4, 5 U.S.C. §§ 522(b)(4);
- B. Declare that the Air Force's decision to release the information is arbitrary, capricious, or otherwise contrary to law in violation of the Administrative Procedure Act, 5 U.S.C. § 701-706;
- C. Permanently enjoin the Air Force, its officers and employees, and those acting in concert with them, from disclosing the information at issue;
- D. Declare that all information the Air Force received from TYBRIN that concerns the propriety of CAPS awards or contractor eligibility was provided on a voluntary basis;
- E. Order the Air Force to pay TYBRIN's costs, including reasonable attorney fees; and
- F. Order further relief that this Court deems appropriate.

Respectfully submitted,

/s/ Christopher J. Aluotto

Christopher J. Aluotto (0059556)
Michael P. Foley (0061227)
Trial Attorneys for Plaintiff,
TYBRIN Corporation
RENDIGS, FRY, KIELY & DENNIS, L.L.P.
One West Fourth Street, Suite 900
Cincinnati, OH 45202-3688
Phone: 513/381-9200
Fax: 513/381-9206
E-Mail: cja@rendigs.com
mfoley@rendigs.com